IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 31 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

MANIBHAI & BAROTHERS CONSTRUCTION CO.

Appearance:

1. INCOME TAX REFERENCE No. 31 of 1995
MR MHIR H JOSHI with MR MANISH R BHATT for Petitioner
SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 07/11/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following questions has been referred for our opinion in respect of assessment year 1986-87:-

"Whether, the Appellate Tribunal is right in law and on facts in directing the ITO to allow investment allowance on the machineries utilized for construction of power house ?"

2. We have heard Mr Mihir H Joshi, learned counsel for the revenue. Though served, none appears for the respondent-assessee.

3. Our attention is invited to the decision of the Supreme Court in CIT vs. N.C. Budheraja & Co., 204 ITR 412 and also to the decision dated 5.7.2001 of this Court in Income-tax Reference No. 197 of 1986 which was between the Commissioner of Income-tax and Shah Engineering Co. The Tribunal had relied upon its decision in the case of Shah Engineering Co. for holding in favour of the assessee while directing the Income-tax Officer to allow investment allowance on the machineries utilized for construction of power house.

4. Since the view taken by the Apex Court and this Court in the aforesaid decisions is that an assessee engaged in the business of construction is not carrying on any industrial undertaking as contemplated by Section 32A of the Income-tax Act, 1961, we answer the question referred in this reference in the negative i.e. in favour of the revenue and against the assessee.

5. The reference stands accordingly disposed of with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

sundar/-